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8 *Attorney for Secured Creditor Korth Direct Mortgage, Inc.*

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **LOS ANGELES DIVISION**

12 In re

13 SEATON INVESTMENTS, LLC, *et al.*,

14 Debtors and Debtors-in-Possession.

15 Affects:

16 All Debtors
17 Seaton Investments, LLC
18 Colyton Investments, LLC
19 Broadway Avenue Investments, LLC
20 SLA Investments, LLC
21 Negev Investments, LLC
22 Alan Gomperts
23 Daniel Halevy
24 Susan Halevy

25 Lead Case No. 2:24-bk-12079-VZ

26 Jointly Administered with Case Nos.:

27 2:24-bk-12080-VZ; 2:24-bk-12081-VZ;
28 2:24-bk-12082-VZ; 2:24-bk-12091-VZ;
2:24-bk-12074-VZ; 2:24-bk-12075-VZ; and
2:24-bk-12076-VZ

29 Chapter 11

30 **KORTH DIRECT MORTGAGE'S
31 OBJECTION TO DEBTOR SEATON
32 INVESTMENTS, LLC'S MOTION TO
33 ENTER POST-PETITION LEASE AND
34 MOTION TO ENTER POST-PETITION
35 FINANCING**

36 Date: December 12, 2024

37 Time: 11:00 a.m.

38 Crtrm.: 1368, Roybal Federal Building
39 255 E Temple Street
40 Los Angeles, CA 90012

41 Hon. Vincent P. Zurzolo

1 Secured creditor, Korth Direct Mortgage, Inc. (“**Korth**”), submits this objection (the
2 “**Objection**”) in response to the above-captioned debtor and debtor-in-possession’s (the “**Debtor**”
3 or “**Seaton**”) *Motion of Debtor and Debtor in Possession Seaton Investments, LLC for Order*
4 *Authorizing Debtor to Enter into Post-Petition Lease* (the “**Lease Motion**”) [ECF No. 314] and
5 *Motion of Debtor and Debtor in Possession Seaton Investments, LLC for Order Authorizing Debtor*
6 *to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364* (the “**DIP Motion**”) [ECF No. 312].

7 In support of its Objection, Korth respectfully states as follows:

8 **BACKGROUND**

9 1. On or about April 23, 2021, a predecessor in interest to Korth entered into loan
10 transactions (the “**Loans**”) with debtors Colyton Investments, LLC (“**Colyton**”), and Seaton, which
11 were secured by certain real property owned by Colyton at 421 Colyton Street, Los Angeles, CA
12 90013 (the “**Colyton Property**”) and by Seaton at 440 Seaton Street, Los Angeles, CA, 90013 (the
13 “**Seaton Property**”) and operated as a single economic unit. A detailed background of the Loans
14 can be found in Korth’s proof of claim filed as Claim No. 2 in Case No. 24-12080.

15 2. In addition to the transactions with Colyton and Seaton, Korth was granted
16 guarantees of the Colyton and Seaton Loans by individual debtors Alan Gomperts, Daniel Halevy,
17 and Susan Halevy.¹

18 3. Seaton and its affiliates filed for bankruptcy on March 19, 2024, roughly a month
19 before the balloon payment on the Colyton and Seaton Loans were due. The debtors moved for
20 joint administration (the “**Jointly Administered Debtors**”) and the motion was granted.

21 4. On November 22, 2024, Seaton filed the Lease Motion and the DIP Motion, seeking
22 to enter into a fifteen (15) year lease (the “**Lease**”) with Levav Group LLC (“**Levav**”) and DMB
23 Fund, a California non-profit d/b/a Broadway Community Care Centers (“**DMB**,” together with
24 Levav, the “**Tenants**”) and a four (4) million-dollar DIP loan (the “**DIP Loan**”) with New Millenia
25 Group.

26 ¹ The original Guaranty was executed by David Halevy, who is now deceased. According to the
27 Debtors, the obligation is now owned by Susan Halevy via the Halevy Trust.

1 5. Per the Lease, the Tenants plan to operate a facility for ““Behavioral Health
2 Treatment’ of adolescents and adults including without limitation, unhoused people, Skidrow
3 population, veterans and all those in need of mental and behavioral services for both outpatient and
4 inpatient services.” Lease, § 4.05.

5 6. Neither the Lease nor the Lease Motion discuss whether such a facility would be
6 allowed in the Seaton Property based on the current zoning of the Seaton Property, and neither the
7 Lease nor the Lease Motion address any contingencies for seeking any variances.² The Lease
8 purports to require the Tenants to secure all permits necessary, but the Motion does not address the
9 status of those permits nor any plan to obtain the permits.

10 7. In support of the Lease and Lease Motion, Seaton filed the *Declaration of Ari Stock*
11 *in Support of Motion of Debtor to Enter into Post-Petition Lease* (the “**Stock Declaration**”) [ECF
12 314-2]. The Stock Declaration alleges that Levav “is in the healthcare business providing support
13 for mental healthcare facilities” and that “Levav’s commitment as a tenant is not contingent upon
14 the application of grants, subsidies, and other government and NGO incentives that may be applied
15 for in connection with the provision of medical and social services at the property.” Stock Decl., p.
16 1.

17 8. In further support of the Lease Motion, the Stock Declaration attaches “Levav’s
18 financial statements” that purport to show its financial health. However, the financial statements
19 raise numerous issues.

20 9. First, the financial statements are for entities named “Bellflower Post Acute,” “El
21 Rancho Vista Healthcare Center,” and “Long Beach Post Acute.” It is entirely unclear how or even
22 whether these entities are related to Levav, or whether they are separate entities altogether. All
23 three facilities, by their names and a quick google search, appear to be skilled nursing,
24 rehabilitation, and other short-term senior care facilities. A significant difference from a behavioral
25 health treatment facility.

27 2 For example, one potential issue left unaddressed by the Lease Motion and the Lease is the
28 current zoning on the facility. The property is currently zoned M3-1-RIO. As currently regulated,
M3 zoned areas cannot contain “Hospitals or sanitariums.”

1 10. Second, the financial statements show that all three facilities are entirely dependent
2 on “the application of grants, subsidies, and other government and NGO incentives” for their
3 operation. For example, Bellflower’s profit and loss statement shows that over 90% of its operating
4 income attributable to its skilled nursing facility comes from either Medicare or Medicaid. Similar
5 percentages exist at the El Rancho Vista and Long Beach Post Acute facilities.

6 11. Seaton ostensibly plans to use the proceeds of the DIP Loan to fund four million
7 dollars of improvements to the Seaton property—defined as “Lessor’s Work”—as required under
8 the Lease. Under the terms of the Lease, the Tenants are then to reimburse Seaton through sums
9 received from any “Governmental Agency” that would reimburse the improvements made to the
10 Seaton Property.

11 12. The DIP Loan’s substantive economic terms include a 6% origination fee
12 (\$240,000), a diligence fee of \$10,000, a twelve-month term, and an interest rate of 12%. During
13 the term, interest-only payments are required, with a balloon payment occurring at the end of the
14 twelve months.

15 13. The DIP Loan is secured by “grants, subsidies, and other government and NGO
16 incentives paid to Seaton” and “personal property acquired with proceeds of the Loan,” which
17 seems to also be the source of the rent paid under the Lease and presumably the income stream
18 from which Korth will be paid.

19 14. Seaton and the Jointly Administered Debtors do not provide any information as to
20 where the payment for the origination fee and the diligence fee is coming from.

21 15. Previously, the Jointly Administered Debtors sought to enter into a similar lease and
22 operation arrangement with another property in these Chapter 11 Cases, referred to as the Broadway
23 Property, with the same Tenants. *See* ECF No. 248.

24 16. The secured lender on the Broadway Property, Archway, objected to the lease
25 arrangement on the Broadway Property, calling into question the legitimacy and credibility of the
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1 principals behind Levav and DMB.³ *See* ECF No. 279. As a result, the Jointly Administered
2 Debtors withdrew the motion on the Broadway property, and refiled—removing all mention to the
3 principals that Archway took issue with. *See* ECF No. 330.

4 **OBJECTION**

5 17. Korth files this Objection to the Debtor's Motion to enter into the Lease and the DIP
6 Loan because (i) Seaton and the Jointly Administered Debtors have not met their burden showing
7 that entering into the Lease is a sound exercise of its business judgment; (ii) entering into the Lease
8 is in direct conflict with its fiduciary duty to its creditors—namely Korth; and (iii) because the
9 success of Seaton's Plan is clearly contingent upon entering into the Lease, the proper time to
10 determine whether entering into the Lease is proper is at Plan confirmation, and not at this juncture.

11 **I. Entering into the Lease is not a sound exercise of Seaton and the Jointly
12 Administered Debtors' business judgment because optimal value would not be
13 realized.**

14 18. Seaton seeks to enter into the Lease pursuant to 11 U.S.C. § 363(b)(1). *See* Lease
15 Mot., 7. As such, Seaton must show that executing the Lease is an exercise of its sound business
16 judgment. *See, e.g., In re Baroni*, 654 B.R. 334, 342 (Bankr. C.D. Cal. 2023). As Seaton recognizes,
17 the business judgment rule is merely a “presumption that in making a business decision the directors
18 of a corporation acted on an informed basis, in good faith and in the honest belief that the action
19 was in the best interests of the company.” Lease Mot., 7. The business judgment rule does not,
20 however, provide blanket authority to a debtor to enter into any transaction nor is it a rubber stamp
on the decision-making of officers or directors.

21 19. Moreover, courts in the Ninth Circuit have an “obligation” when Bankruptcy Code
22 section 363 is invoked “to assure that optimal value is realized by the estate under the
23 circumstances.” *In re Lahijani*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005). Here, Seaton has not
24 made any showing of its sound business judgment nor that invoking section 363 would lead to
25 “optimal value” realized by the estate.

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1 20. Seaton merely states in the Lease Motion that “[e]ntering into the Lease is an
2 exercise of Seaton’s business judgment.” Seaton does not, however, explain how entering into the
3 lease maximizes the value of the estate or furthers its plan of reorganization. Seaton also does not
4 provide any evidence as to how it exercised its discretion of its business judgment, but rather relies
5 on short declarations by the Tenants.

6 21. While Seaton does state that the “Lease and the DIP Loan will allow Seaton to
7 propose a plan to pay its creditors,” the economic reality of the nature of the Lease, its current debt
8 structure, and the real estate market does not support the assertion that the Lease will help
9 implement a confirmable Plan.

10 22. Seaton’s current plan is to make payments to Korth over three (3) years and then
11 make a balloon payment that would pay Korth’s secured claim in full at the conclusion of the plan
12 payments. *See* ECF No. 276, at § V.E. To make this payment, Seaton would need to either refinance
13 the Seaton Property or sell the Seaton Property and use the proceeds to pay off Korth.

14 23. Placing such special-use Tenants—behavioral health services for a transient
15 population—in the Seaton Property potentially undermines the value of the Seaton Property and
16 makes it impossible to sell or refinance at a price that can support pay-off under the Plan. No
17 evidence has been provided through the Lease Motion or the DIP Motion that entering into the
18 Lease and the DIP Loan will support a valuation at a price that can validly support Plan payments
19 for Korth’s claim in a cram-down Plan.

20 24. Seaton has clearly not shown this Court through the Lease Motion or the DIP Motion
21 that “optimal value” would be realized by the estate under the terms of the Lease.

22 25. In addition, the very financial statements Levav provided show that it is not in the
23 business of providing either the type of services contemplated under the Lease or serving the type
24 population contemplated under the Lease. More damaging, Seaton has not offered any evidence
25 connecting Bellflower Post Acute, El Rancho Vista Healthcare Center, or Long Beach Post Acute
26 to Levav or DMB.

27 26. Levav’s financial statements purport to show it in the business of staffing or running
28 senior care rehabilitation centers that are funded almost entirely through Medicare and Medicaid.

1 This is a far cry from behavioral health centers for a population that may not qualify for Medicare
2 and Medicaid. Further, Levav's own financials call into question the statement in the Stock
3 Declaration that Levav is prepared to be a tenant regardless of whether they receive grants,
4 government subsidies, or other NGO support as 90% of its revenue at the facilities for which it
5 provided financials receive significant money from government programs. It is difficult to
6 imagine—and Seaton has provided no evidence of—the Tenants having the capital to make the
7 Lease payments without grants, government subsidies, or other NGO support. The ability of the
8 Tenants to perform under the Lease is entirely speculative.

9 27. Lastly, the Jointly Administered Debtors are in the process of having a luxury spa
10 tenant build out and take possession of the Colyton Property. The Jointly Administered Debtors
11 have repeatedly referred to the Seaton and Colyton Property as being operated as a “single
12 economic unit.” Nowhere in the Lease Motion or the DIP Motion does Seaton or the Jointly
13 Administered Debtors attempt to reconcile putting a treatment facility for a transient population in
14 the same facility as a luxury spa tenant. These uses seem entirely incompatible.

15 **II. Entry into the Lease is a conflict with Seaton’s fiduciary duty to maximize the
16 estate for its creditors.**

17 28. A “debtor in possession performing the duties of the trustee is the representative of
18 the estate and is saddled with the same fiduciary duty to maximize the value of the estate available
19 to creditors.” *Cheng v. K&S Diversified Invs., Inc. (In re Cheng)*, 308 B.R. 448, 455 (B.A.P. 9th
20 Cir. 2004).

21 29. Here, the estate of Seaton consists of one asset: the Seaton Property (and potential
22 rents derived therefrom). The primary creditor on the Seaton Property is Korth. Now that Seaton is
23 insolvent and in bankruptcy, it has a fiduciary duty to maximize the value of the Seaton Property
24 for Korth’s benefit. *See In re Reliant Energy Channelview LP*, 594 F.2d 200, 210 (3d Cir. 2010).
25 If entering into the Lease would further devalue the property, then Seaton is in violation of its
26 fiduciary duty to the estate and Korth.

27 30. As mentioned, Korth has concerns that entering the Lease is (1) not allowed under
28 current zoning; (2) could cause the property to become valued as a “special use property”; and (3)

1 would devalue the property such that a refinancing or sale of the property would be impossible in
2 an amount that would properly lead to the balloon payment for Korth's claim as contemplated under
3 the Plan.

4 31. To address this issue with valuation of the Seaton Property, and whether the Lease
5 properly maximizes the value of the estate—thus meeting Seaton's fiduciary duty—Korth plans to
6 issue discovery under Bankruptcy Rule 9014(c). Until such time, however, it is premature for this
7 Court to determine whether to authorize Seaton to enter into the Lease.

8 **III. The Lease is the cornerstone of Seaton's Plan, and any determination of the Lease
9 should be considered with the Plan.**

10 32. Korth plans on objecting to the Jointly Administered Debtor's Plan. The objection
11 deadline for the Plan is not scheduled until February 13, 2025.

12 33. As Seaton asserts in the Lease Motion, the Lease means that "Seaton's ability to
13 confirm a plan will be assured." Lease Mot., 6. Korth disagrees.

14 34. Korth does agree with Seaton, however, that without the Lease the Plan cannot be
15 confirmed. Moreover, as Seaton alludes to, the Lease is the fulcrum point for the Plan. That is, the
16 Plan would have a possibility of success only if the Lease is entered into (although Korth does not
17 believe this is the case either).

18 35. Because the success of the Plan is so dependent on the Lease—and whether the
19 Lease can provide a valuation for the satisfaction of Korth's claim as required under the Bankruptcy
20 Code—this Court should not approve the Lease, if at all, until Plan confirmation.

21 36. Given the imminent discovery Korth will issue relating to valuation, the Lease, and
22 the proposed Tenants, it is simply too premature to rule on an issue that could determine the *entire*
23 case.

24 **RESERVATION OF RIGHTS**

25 Korth reserves all rights to later object to the Plan, and nothing herein should be considered
26 a waiver of any right Korth may have under applicable bankruptcy or non-bankruptcy law, or any
27 equitable relief as it may be entitled to.

1
2 Dated: November 29, 2024
3

POLSINELLI LLP

4 By: /s/ Garrick Vanderfin
5 Garrick Vanderfin

6 *Attorney for Korth Direct Mortgage, Inc.*
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2049 Century Park East, Suite 2900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): **KORTH DIRECT MORTGAGE'S OBJECTION TO DEBTOR SEATON INVESTMENTS, LLC'S MOTION TO ENTER POST-PETITION LEASE AND MOTION TO ENTER POST-PETITION FINANCING** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On November 29, 2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On November 29, 2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on November 29, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA FEDERAL EXPRESS

Honorable Vincent P. Zurzolo
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1360 / Courtroom 1368
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 29, 2024 Garrick Vanderfin
Date Printed Name

/s/ Garrick Vanderfin
Signature

ATTACHMENT TO SERVICE LIST

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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